

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

921C0679

HOUSE BILL NO. 1198

Introduced by: Representatives Cutler, Crisp, Diedrich (Larry), Haley, Jaspers, Kazmerzak, and Wetz and Senators Kleven, Benson, Frederick, Hutmacher, and Symens

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to market development
2 and promotion activities by certain commodity checkoff programs and the expenses
3 associated with such activities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 38-10-2 be amended to read as follows:

6 38-10-2. Terms used in this chapter mean:

- 7 (1) "Commercial channels," the sale of wheat for any use, when sold to any commercial
8 buyer, dealer, processor, cooperative, or to any person, public or private, who resells
9 any wheat or product produced from wheat;
- 10 (2) "Commission" or "wheat commission," the Wheat Utilization, Research and Market
11 Development Commission;
- 12 (3) "First purchaser," any person, public or private corporation, or partnership buying,
13 accepting for shipment (either in state or out of state), or otherwise acquiring the
14 property in or to wheat from a grower, ~~and shall include a~~ including any mortgagee,
15 pledgee, lienor, or other person, public or private, having a claim against the grower,
16 ~~where~~ if the actual or constructive possession of ~~such~~ the wheat is taken as part

1 payment or in satisfaction of ~~such~~ the mortgage, pledge, lien, or claim;

2 (4) "Grower," anyone personally engaged in growing wheat, and includes both the owner
3 and tenant jointly, a person, partnership, limited liability company, association,
4 corporation, cooperative, trust, sharecropper, and any ~~and all~~ other business units,
5 devices, and arrangements;

6 (5) "Participating grower," a grower who has not requested a refund from the payment
7 of the promotional fee for the past three years;

8 (6) "Market development and promotion," any action, including paid advertising,
9 technical assistance, and trade servicing activities, to enhance the image or desirability
10 of wheat and wheat products in domestic and foreign markets, and any activity
11 designed to communicate to consumers, importers, processors, wholesalers, retailers,
12 government officials, or others in information relating to the positive attributes of
13 wheat and wheat products or the benefit of importation, use, distribution, utilization,
14 or consumption of wheat and wheat producers; and

15 (7) "Research," any type of study or practical application to advance the image,
16 desirability, production, production development, quality, or functional or nutritional
17 value of wheat and wheat products, including any research activity designed to
18 identify and analyze barriers to domestic and export sales of wheat and wheat
19 products.

20 Section 2. That § 38-29-1 be amended to read as follows:

21 38-29-1. Terms used in this chapter, ~~unless the context plainly otherwise requires,~~ mean:

22 (1) "Council," the South Dakota Soybean Research and Promotion Council;

23 (2) "First purchaser," any person who initially places soybeans, whether as an owner or
24 agent, into the channels of trade and commerce, or who is engaged in the processing
25 of soybeans into any form. However, a grower selling ~~his~~ unharvested soybeans, or

1 delivering his soybeans from the farm on which they are produced to storage facilities,
2 packing shed, or processing plant, within the state, is not a first purchaser;

3 (3) "Grower," any person who plants, raises, and harvests soybeans from more than ten
4 acres;

5 (4) "Participating grower," a grower who has not requested a refund from the payment
6 of assessments on soybean production under this chapter for a particular year and any
7 person who owns or operates an agricultural producing or growing facility for
8 soybeans and shares in the profits and risks of loss from such operation, and who
9 produces soybeans in South Dakota during the current or preceding marketing year;

10 (5) "Secretary," the secretary of the South Dakota Department of Agriculture;

11 (6) "Soybean," all varieties of soybeans marketed or harvested within the state;

12 (7) "Market development and promotion," any action, including paid advertising,
13 technical assistance, and trade servicing activities, to enhance the image or desirability
14 of soybeans and soybean products in domestic and foreign markets, and any activity
15 designed to communicate to consumers, importers, processors, wholesalers, retailers,
16 government officials, or others in information relating to the positive attributes of
17 soybeans and soybean products or the benefit of importation, use, distribution,
18 utilization, or consumption of soybeans and soybean producers; and

19 (8) "Research," any type of study or practical application to advance the image,
20 desirability, production, production development, quality, or functional or nutritional
21 value of soybeans and soybean products, including any research activity designed to
22 identify and analyze barriers to domestic and export sales of soybeans and soybean
23 products.

24 Section 3. That § 38-32-1 be amended to read as follows:

25 38-32-1. Terms used in this chapter mean:

- 1 (1) "Bushel," fifty-six pounds of corn by weight;
- 2 (2) "Corn," all varieties of corn marketed within the state except sweet corn, popcorn, or
3 seed corn;
- 4 (3) "Council," the South Dakota Corn Utilization Council;
- 5 (4) "First purchaser," any person who buys, accepts for shipment, or otherwise acquires
6 corn from a grower, except any mortgagee, pledgee, lienor or other person having a
7 claim against a grower if actual or constructive possession of ~~such~~ the corn is taken
8 as partial payment or in satisfaction of ~~such~~ the mortgage, pledge, lien, or claim.
9 However, first purchaser does not include sales between growers not for resale;
- 10 (5) "Grower," any person who plants, raises, and harvests corn;
- 11 (6) "Participating grower," a grower who has not requested a refund from the payment
12 of assessments on corn production under this chapter for a particular year, and any
13 person who owns or operates an agricultural producing or growing facility for corn
14 and shares in the profits and risks of loss from ~~such~~ the operation, and who produces
15 corn in South Dakota during the current or preceding marketing year;
- 16 (7) "Secretary," the secretary of the South Dakota Department of Agriculture;
- 17 (8) "Market development and promotion," any action, including paid advertising,
18 technical assistance, and trade servicing activities, to enhance the image or desirability
19 of corn and corn products in domestic and foreign markets, and any activity designed
20 to communicate to consumers, importers, processors, wholesalers, retailers,
21 government officials, or others in information relating to the positive attributes of corn
22 and corn products or the benefit of importation, use, distribution, utilization, or
23 consumption of corn and corn producers; and
- 24 (9) "Research," any type of study or practical application to advance the image,
25 desirability, production, production development, quality, or functional or nutritional

value of corn and corn products, including any research activity designed to identify and analyze barriers to domestic and export sales of corn and corn products.

Section 4. That § 38-27-1 be amended to read as follows:

38-27-1. Terms used in this chapter mean:

- (1) "Council," the South Dakota Oilseeds Council;
- (2) "First purchaser," any person who initially places sunflowers, safflowers, canola or flax, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of sunflowers, safflowers, canola, or flax into any form. A grower selling his unharvested sunflowers, safflowers, canola, or flax or delivering his sunflowers, safflowers, canola, or flax from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not a first purchaser;
- (3) "Grower," any person who plants, raises, and harvests sunflowers, safflowers, canola, or flax from more than ten acres;
- (4) "Hundredweight," a one hundred pound unit or a combination of packages making a one hundred pound unit or any one hundred pound shipment of sunflowers, safflowers, or canola based on invoices or bills of lading records;
- (5) "Oilseeds," any ~~and all varieties~~ variety of sunflowers, safflowers, canola (rapeseed), or flax marketed or harvested within the state;
- (6) "Participating grower," a grower who has not requested a refund from the payment of assessments on sunflower, safflower, canola, or flax production under this chapter for a particular year;
- (7) "Secretary," the secretary of the South Dakota Department of Agriculture;
- (8) "Market development and promotion," any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability

of oilseeds and oilseed products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or others in information relating to the positive attributes of oilseeds and oilseed products or the benefit of importation, use, distribution, utilization, or consumption of oilseeds and oilseed producers; and

(9) "Research," any type of study or practical application to advance the image, desirability, production, production development, quality, or functional or nutritional value of oilseeds and oilseed products, including any research activity designed to identify and analyze barriers to domestic and export sales of oilseeds and oilseed products.

Section 5. That chapter 38-10 be amended by adding thereto a NEW SECTION to read as follows:

Except as provided in this chapter, §§ 3-9-1 to 3-9-4, inclusive, as they relate to trade serving activities for market development and promotion, §§ 4-7-10.2, 4-7-10.5, 5-15-27, and 5-23-2 do not apply to the commission or the administration and enforcement of this chapter.

Section 6. That chapter 38-29 be amended by adding thereto a NEW SECTION to read as follows:

Except as provided in this chapter, §§ 3-9-1 to 3-9-4, inclusive, as they relate to trade serving activities for market development and promotion, §§ 4-7-10.2, 4-7-10.5, 5-15-27, and 5-23-2 do not apply to the council or the administration and enforcement of this chapter.

Section 7. That chapter 38-32 be amended by adding thereto a NEW SECTION to read as follows:

Except as provided in this chapter, §§ 3-9-1 to 3-9-4, inclusive, as they relate to trade serving activities for market development and promotion, §§ 4-7-10.2, 4-7-10.5, 5-15-27, and 5-23-2 do not apply to the council or the administration and enforcement of this chapter.

1 Section 8. That chapter 38-27 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Except as provided in this chapter, §§ 3-9-1 to 3-9-4, inclusive, as they relate to trade serving
4 activities for market development and promotion, §§ 4-7-10.2, 4-7-10.5, 5-15-27, and 5-23-2
5 do not apply to the council or the administration and enforcement of this chapter.

6 Section 9. That § 38-10-14 be amended to read as follows:

7 38-10-14. ~~The wheat commission may establish an administrative office for the wheat~~
8 ~~commission in the State of South Dakota at such place as may be suitable for the furtherance of~~
9 ~~this chapter. The~~ In administering this chapter, the commission may:

- 10 (1) Expend the funds collected pursuant to this chapter;
- 11 (2) Appoint, discharge, fix compensation for, and prescribe the duties of such personnel
12 as it ~~may deem~~ deems necessary ~~subject to Bureau of Personnel guidelines;~~
- 13 (3) Lease, purchase, own, equip, maintain, operate, and dispose of equipment in the
14 commission office;
- 15 (4) Accept donations of funds, property, services, and other assistance from public,
16 private, and other sources for the purpose of aiding and promoting the work and
17 objectives of the commission;
- 18 (5) Appoint an attorney who shall act for the commission when needed; and
- 19 (6) Establish an administrative office for the Wheat Commission in this state at a place
20 that is suitable for the implementation of this chapter.

21 Section 10. That § 38-29-7 be amended to read as follows:

22 38-29-7. The Soybean Research and Promotion Council may:

- 23 (1) Enter into contracts, including loans and grants, and cooperate with any person, any
24 local, state, or national organization, whether public or private, or with any
25 governmental department or agency for the discovery, promotion, development, and

1 expansion of domestic and export markets and industries and for research, education,
2 and transportation;

3 (2) Expend the funds collected pursuant to this chapter and appropriated for its
4 administration;

5 (3) Appoint, employ, discharge, fix compensation for, and prescribe the duties of such
6 personnel as it ~~may deem~~ deems necessary;

7 (4) Accept donations of funds, property, services, or other assistance from public or
8 private sources for the purpose of furthering the objectives of the council;

9 (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies
10 necessary to carry out the provisions of this chapter; and

11 (6) Establish an administrative office for the council in this state at a place that is suitable
12 for the implementation of this chapter.

13 Section 11. That § 38-32-13 be amended to read as follows:

14 38-32-13. The council may, ~~but is not limited to~~:

15 (1) Contract and cooperate with any person, organization, or with any governmental
16 department or agency for market maintenance and expansion, research, education,
17 transportation, and for the prevention, modification or elimination of trade barriers
18 which obstruct the free flow of corn and corn products to market;

19 (2) Expend the funds collected pursuant to this chapter and appropriated for its
20 administration;

21 (3) Appoint, discharge, fix compensation for, and prescribe the duties of such personnel
22 as it ~~may deem~~ deems necessary;

23 (4) Accept donations of funds, property, services, or other assistance from public or
24 private sources for the purpose of furthering the objectives of the council; and

25 (5) Establish an administrative office for the council in this state in a place that is suitable

1 for the implementation of this chapter.

2 Section 12. That § 38-27-8 be amended to read as follows:

3 38-27-8. In the administration of this chapter, the oilseeds council may:

4 (1) Contract and cooperate with any person or with any governmental department or
5 agency for research, education, and transportation;

6 (2) Expend the funds collected pursuant to this chapter and appropriated for its
7 administration;

8 (3) Appoint, discharge, fix compensation for, and prescribe the duties of personnel as
9 necessary, subject to approval of the secretary;

10 (4) Accept donations of funds, property, services, or other assistance from public or
11 private sources for the purpose of furthering the objectives of the council; and

12 (5) Establish an administrative office for the council in this state in a place that is suitable
13 for the implementation of this chapter.

14 Section 13. That § 38-10-20 be amended to read as follows:

15 38-10-20. In connection with and in furtherance of the policy and purpose declared in
16 § 38-10-1, the wheat commission may promulgate rules pursuant to chapter 1-26 concerning:

17 (1) The procedures for obtaining a declaratory ruling;

18 (2) The procedures for fee collection for wheat sold either in-state or out-of-state;

19 (3) The procedures for obtaining a refund of the fee; ~~and~~

20 (4) The procedures for collecting delinquent fees and assessing penalties; and

21 (5) The procedures to establish uniform and reasonable allowances for expenses of actual
22 and necessary travel and other expenses of members, officers, and employees of the
23 commission incurred in the performance of their official duties pursuant to this
24 chapter as related to trade servicing and promotion activities.

25 Section 14. That § 38-29-7.1 be amended to read as follows:

38-29-7.1. The council may promulgate rules pursuant to chapter 1-26 concerning:

- (1) The procedures for obtaining a declaratory ruling;
- (2) The procedures for assessments collected for soybeans grown or sold to a first purchaser;
- (3) The procedures for obtaining a refund of the assessment;
- (4) The procedures for collecting delinquent assessments and assessing penalties;
- (5) The record-keeping and reporting requirements of first purchasers; ~~and~~
- (6) The requirements governing grants and loans made pursuant to § 38-29-7, including eligibility requirements and requirements for application, awards, and administration; and
- (7) The procedures to establish uniform and reasonable allowances for expenses of actual and necessary travel and other expenses of members, officers, and employees of the council incurred in the performance of their official duties pursuant to this chapter as related to trade servicing and promotion activities.

Section 15. That § 38-32-14 be amended to read as follows:

38-32-14. The council may promulgate rules pursuant to chapter 1-26 concerning:

- (1) The procedures for obtaining a declaratory ruling;
- (2) The procedures for assessments collected for corn sold to a first purchaser;
- (3) The procedures for obtaining a refund of the assessment;
- (4) The procedures for collecting delinquent assessments and assessing penalties;
- (5) The record keeping and reporting requirements of first purchasers; ~~and~~
- (6) Procedures, forms, public notices, and other requirements for nominating director candidates and for conducting and certifying elections; and
- (7) The procedures to establish uniform and reasonable allowances for expenses of actual and necessary travel and other expenses of members, officers, and employees of the

council incurred in the performance of their official duties pursuant to this chapter as related to trade servicing and promotion activities.

Section 16. That § 38-27-8.1 be amended to read as follows:

38-27-8.1. The council may promulgate rules pursuant to chapter 1-26 concerning:

- (1) The procedures for obtaining a declaratory ruling;
- (2) The procedures for assessments collected for sunflowers, safflowers, canola, or flax grown or sold to a first purchaser;
- (3) The procedures for obtaining a refund of the assessment;
- (4) The procedures for collecting delinquent assessments and assessing penalties; and
- (5) The record-keeping and reporting requirements of first purchasers; and
- (6) The procedures to establish uniform and reasonable allowances for expenses of actual and necessary travel and other expenses of members, officers, and employees of the council incurred in the performance of their official duties pursuant to this chapter as related to trade servicing and promotion activities.